

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN H. MOONEY and MARY P. MOONEY,

Plaintiffs-Appellees,

V

DOUGLAS R. HAYWARD, II,

Defendant-Appellant.

UNPUBLISHED
September 30, 2003

No. 240407
Cheboygan Circuit Court
LC No. 00-006775-CH

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment quieting title to disputed property in plaintiffs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This is a boundary dispute case. Defendant owns property located immediately to the north of property owned by plaintiffs. A survey of defendant's property showed that a dilapidated east-west fence running between the properties partially encroached on defendant's property as legally described. Plaintiffs filed suit to quiet title to the disputed property. They alleged that they had established ownership of the disputed property by adverse possession and/or acquiescence, and sought compensation for damaged trees.

At trial witnesses testified that the fence had been in existence for more than fifty years and had always been considered the boundary between the properties. Defendant testified that he commissioned the survey only because the fence was dilapidated in spots, and stated that had he been able to walk the entire length of the fence he would have accepted it as the boundary between the properties. Jean Hutchinson, defendant's mother and predecessor in interest, testified by deposition that her mother, Mary Masterton, had an agreement with Herbert Kirsch, plaintiffs' predecessor in interest, that allowed Kirsch to pasture his cattle in an area north of the fence. Kirsch erected a north-south fence to keep his cattle out of Masterton's yard.

The trial court concluded that plaintiffs established ownership of the disputed property by acquiescence, finding that the fence had existed for more than fifty years and had been treated by the parties' predecessors in interest and others as the true boundary between the properties. The trial court noted that a similar fence existed on the opposite side of the north-south road that ran along the western boundary of the parties' properties. The trial court rejected defendant's contention that the fence was erected as a result of the agreement between Masterton and Kirsch,

noting that the evidence showed that the fence existed before Masterton purchased the property in 1941. The trial court entered a judgment quieting title to the disputed property in plaintiffs, and awarded them \$230 in compensation for damaged trees.

An action to quiet title is equitable in nature. We review the trial court's findings of fact for clear error, and its conclusions of law de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). Clear error exists when the reviewing court is left with a firm and definite conviction that a mistake has been made. *Massey v Mandell*, 462 Mich 375, 379; 614 NW2d 70 (2000).

A claim of acquiescence to a boundary line for the fifteen-year statutory period, MCL 600.5801(4), requires a showing by a preponderance of the evidence that the parties acquiesced in the line and treated it as the true boundary for the statutory period, regardless of whether there was a bona fide controversy regarding the boundary. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000); *Killips, supra*, 260. A party may tack the acquiescence of predecessors in title in order to demonstrate acquiescence for the statutory period. *Id.*

Defendant argues that the trial court erred by finding that plaintiffs established that the parties acquiesced to the fence line as the true boundary line for the statutory period. We disagree and affirm the trial court's judgment. The evidence showed that the east-west fence was more than fifty years old. Witnesses who knew the parties' predecessors in interest testified that the fence was considered the boundary between the properties. The evidence supported the trial court's finding that the parties' predecessors in interest and the parties treated the east-west fence as the true boundary between the properties. The trial court's rejection of defendant's contention that the fence was erected as a result of the agreement between Masterton and Kirsch was supported by evidence that the fence predated Masterton's purchase of her property. *Id.*, 258, 260. The trial court's finding that the fence was erected to demarcate the boundary between the properties was also supported by evidence that a similar east-west fence located on the other side of the road bounding the parties' properties on the west was considered the boundary between the properties located on either side of that fence. The trial court correctly found that plaintiffs established by a preponderance of the evidence that the parties acquiesced in the fence line as the true boundary between the properties for the requisite statutory period. *Walters, supra*; *Killips, supra*.

Affirmed.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Kurtis T. Wilder